

CONTRACT #2
RFS # 332.01-03310
FA # Pending

**Tennessee Higher Education
Commission (THEC)**

VENDOR:
XAP Corporation



RICHARD G. RHODA
Executive Director

PHIL BREDESEN
Governor

STATE OF TENNESSEE
HIGHER EDUCATION COMMISSION
PARKWAY TOWERS, SUITE 1900
NASHVILLE, TENNESSEE 37243-0830
(615) 741-3605
FAX: (615) 741-6230
www.state.tn.us/thec/

RECEIVED

APR 05 2010

FISCAL REVIEW

MEMORANDUM

TO: Leni Chick, Fiscal Review Committee

FROM: Will Burns, Associate Executive Director, Legal and Regulatory Affairs

DATE: April 1, 2010

SUBJECT: Non-Competitive Contract Summary
XAP Corporation – Fiscal Analysis

The Tennessee Higher Education Commission (THEC) proposes to submit a non-competitive contract request for the provision of electronic transcript services and CollegeforTN initiative with XAP Corporation.

Pursuant to the request of the Fiscal Review Committee, THEC is providing the information below.

Actual Expenditures Anticipated in Each Year of the Contract

Background and Objectives: Tennessee lags regional and national averages in the educational attainment level. According to the National Center for Higher Education Management Systems, only six states have a working age population with a lower proportion of college graduates than Tennessee. Currently, only 29.9 percent of Tennessee's adults aged 25-64 hold an Associate's degree or higher, compared to an average of 34.3 percent for Southern Regional Education Board states and 37.2 percent for the nation.

Tennessee currently produces approximately 35,000 college graduates per year. Holding conditions constant, current production indicates that annual degree production will be about 38,000 in 2015. To meet the national average, Tennessee needs to produce a cumulative additional 269,000 degrees (Associates and Bachelors) by 2025. To achieve this goal, Tennessee higher education must produce 44,000 postsecondary degrees per year by 2015 and eventually 59,000 degrees per year by 2025. In the other words, Tennessee needs to increase the number of individuals obtaining degrees by 3.5 percent

every year from now until 2025, according to www.MeetingtheChallengefromtn.gov/moa/what_goal.

In 2005, the Tennessee Department of Education (TDOE), Tennessee Student Assistance Corporation (TSAC), and Tennessee Higher Education commission (THEC) sought a solution that would provide a broad avenue of access to Tennessee educational opportunities beyond high school.

Product: Tennessee procured a solution from XAP Corporation to provide a broad avenue of access to Tennessee education opportunities beyond high school. The resulting website www.CollegeforTN.org is designed especially for use in Tennessee and allows the user, which includes students in grades K – 12, to plan their future careers, begin to understand the need for higher education, know which courses to take in middle and high school to be academically prepared for college, prepare for tests, including ACT, SAT, and GRE, and learn how to apply for financial aid. Additionally, postsecondary students, parents, guidance counselors, and college access professionals will have access to a comprehensive suite of career, college, and financial aid planning services in a web-based environment using a single log-on and password.

The Contract term is May 1, 2010 through April 28, 2015 for a total contract value of \$5,982,280.00. Anticipated expenditures include:

Deliverable description:	FY: 2010	FY: 2011	FY: 2012	FY: 2013	FY:2014-15
Transitions Premium Module for High School Students	\$700,551.00	\$700,551.00	\$700,551.00	\$700,551.00	\$700,551.00
Middle School Module	\$ 130,000.00	\$ 130,000.00	\$ 130,000.00	\$ 130,000.00	\$ 130,000.00
Paws in Jobland Module (Elementary School Level)	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00	\$ 160,000.00
Applications and Transcripts	\$ 205,905.00	\$ 205,905.00	\$ 205,905.00	\$ 205,905.00	\$ 205,905.00
Adult Module – Adult Learner/Job Seeker	\$ 0.00 (included with 5-year contract)	\$ 0.00 (included with 5-year contract)	\$ 0.00 (included with 5-year contract)	\$ 0.00 (included with 5-year contract)	\$ 0.00 (included with 5-year contract)

Justification for Non-Competitive Contract:

The State found no other entities who offer the comprehensive array of career, high school, college and financial aid planning services needed by THEC, TSAC and the Tennessee school systems. No other vendor offers the total package of needed solutions including: transcript, higher education admission application, career exploration, high school planning, college planning, and financial aid planning resources needed by Tennessee integrated into one common system. XAP also holds extensive knowledge of State Board Rules and Regulations as well as the content/curriculum standards required by Tennessee law for school counselors, such institutional knowledge is invaluable to the partnership and fosters the portal's success.

XAP Corporation provided exemplary services for the State of Tennessee for several years; the company maintains historical data, experience and background knowledge which all other vendors lack. Over 200,000 students created accounts on CollegeforTN.org. A new vendor will result in the loss of the portfolio information for each of those accounts. Portfolio deletion would result in the loss of all records of admission applications submitted, assessments taken, careers explored, high school planning completed for over 200,000 Tennesseans. Furthermore, several local school districts have or are in the process of incorporating CollegeforTN.org into their classroom curriculum.

Currently, THEC holds a \$1.5 million contract with a full service marketing firm to promote college access and success; visiting and using CollegeforTN.org is the call to action in every aspect of this public outreach campaign. All campaign outreach materials direct students and their parents to visit CollegeforTN.org with the tagline "Higher Education. Put Your Mind To It." The campaign is in its second year and has seen much success winning several awards on the regional and national level. As of November 1, the campaign has seen almost \$900,000 of media time, purchased and in-kind, used to promote CollegeforTN.org.

And lastly, state personnel in partnership with XAP have extensively trained school administrators, school counselors, teachers, higher education personnel, and college access professionals across Tennessee in using the resources of CollegeforTN.org. A change if vendor would result in the need for re-training each of these professionals which would result in a substantial loss of personnel time, state resources and grant funds.

Explanation provided if not submitted prior to sixty days of start date of Contract:

These services were originally contracted through the Tennessee Department of Education (TDOE), but administered by THEC and funded by TSAC's lottery account, and it was not determined until towards the end of the contract was due that for practical matters, THEC should be the holder of the contract. Due to other business/contract/legislative matters with either earlier start dates, or requested submission dates, this contract was addressed at the earliest time possible, and do request the committee's indulgence for allowing only a thirty day advance.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Will Burns, Associate Executive Director, Legal and Regulatory Affairs		*Contact Phone:	615-741-3605	
*Original Contract Number:			*Original RFS Number:		
Edison Contract Number: <i>(if applicable)</i>	19758		Edison RFS Number: <i>(if applicable)</i>	33201-03310	
*Original Contract Begin Date:	May 1, 2010		*Current End Date:	April 30, 2015	
Current Request Amendment Number: <i>(if applicable)</i>			NA		
Proposed Amendment Effective Date: <i>(if applicable)</i>			NA		
*Department Submitting:			Higher Education		
*Division:			Tennessee Higher Education Commission (THEC)		
*Date Submitted:			April 5, 2010		
*Submitted Within Sixty (60) days:			No		
<i>If not, explain:</i>			These services were originally contracted through the Tennessee Department of Education (TDOE), but administered by THEC and funded by TSAC's lottery account, and it was not determined until towards the end of the contract was due that for practical matters, THEC should be the holder of the contract. Due to other business/contract/legislative matters with either earlier start dates, or requested submission dates, this contract was addressed at the earliest time possible, and do request the committee's indulgence for allowing only a thirty day advance.		
*Contract Vendor Name:			XAP Corporation		
*Current Maximum Liability:			\$1,196,456.00		
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2010	FY: 2011	FY: 2012	FY: 2013	FY 2014-15	FY
\$1,196,456	\$1,196,456	\$1,196,456	\$1,196,456	\$1,196,456	\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$

Supplemental Documentation Required for
Fiscal Review Committee

IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		NA		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		NA		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		NA		
*Contract Funding Source/Amount:	State:		Federal:	
Interdepartmental:	\$5,982,280	<i>Other:</i>		
If " <i>other</i> " please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
Method of Original Award: <i>(if applicable)</i>				
*What were the projected costs of the service for the entire term of the contract prior to contract award?				

Supplemental Documentation Required for Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description:	FY: 2010	FY: 2011	FY: 2012	FY: 2013	FY: 2014-15
Transitions Premium Module for High School Students	\$700,551.00	\$700,551.00	\$700,551.00	\$700,551.00	\$700,551.00
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* No annual increase with a 5 yr agreement or 6% annual increase on a renewal of less than 5 years.

Current	2010	2011	2012	2013	2014	Total
Annual Premium	1,196,456	1,268,243	1,344,338	1,424,998	1,510,498	6,744,53
Annual No Escalator	1,196,456	1,196,456	1,196,456	1,196,456	1,196,456	5,982,28
Savings		71,787	147,882	228,542	314,042	762,25

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials

Supplemental Documentation Required for Fiscal Review Committee

between contract deliverables.					
Proposed Vendor Cost: (name of vendor)	FY: 2010	FY: 2011	FY: 2012	FY: 2013	FY: 2014-15
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

*This pricing represents a significant savings based on:

All public and private high schools and all combined K – 12 schools which include 9 – 12 grades.

Total schools with grades 9 – 12 603 schools

Includes 452 public schools, 51 private and catholic high schools

All public and private middle schools and all combined K – 12 schools which include 6 – 8 grades.

Total schools with grades 6 – 8 547 schools

Includes 368 public schools, 179 private and catholic high schools

Paws in Jobland includes all public and private elementary and middle schools and all combined K – 12 schools which include grades 1 – 5.

Total schools with grades 1 – 5 1,433 schools

(Less than \$385 per K-12 school)

A total of 945,684 secondary students and 224,600, postsecondary students - totaling 1,170,284 able to create accounts and/or access resources in CollegeforTN (career and education exploration for all students (approximately \$1.00 per student). Plus, all TN residents have access to CollegeforTN.

Average cost for processing college applications, \$5 - \$10

Average cost for sending and receiving transcripts, more than \$15

Estimated \$6.70 per paper-based transcript processed (DOE/NCES study on cost per transcript to secondary/postsecondary schools), with an average of 6 transcripts per student being requested. Postsecondary institutions calculate processing costs over \$9 per incoming high school transcript.

Supplemental Documentation Required for
Fiscal Review Committee

**Based on 2008 applications and transcripts sent and received in TN, less than \$ 1.55 per document.

NON-COMPETITIVE CONTRACT REQUEST

This request is NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

AGENCY REQUEST TRACKING # 33201-03310	
1 PROCURING AGENCY	Tennessee Higher Education Commission (THEC)
2 SERVICE	Provision of electronic transcript services and CollegeforTN initiative.
3 APPROVAL CRITERIA (select one)	<input checked="" type="checkbox"/> non-competitive negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service
4 PROPOSED CONTRACTOR	XAP CORPORATION
5 CONTRACT BEGIN DATE (attach explanation if < 60 days after F&A receipt)	May 1, 2010
6 CONTRACT END DATE (with ALL options to extend exercised)	April 30, 2015
7 MAXIMUM CONTRACT COST (with ALL options to extend exercised)	\$5,982,280.00
8 SERVICE DESCRIPTION <p>To provide a broad avenue of access to Tennessee education opportunities beyond high school. The resulting website www.CollegeforTN.org is designed especially for use in Tennessee and allows the user, which includes students in grades K – 12, to plan their future careers, begin to understand the need for higher education, know which courses to take in middle and high school to be academically prepared for college, prepare for tests, including ACT, SAT, and GRE, and learn how to apply for financial aid. Additionally, postsecondary students, parents, guidance counselors, and college access professionals will have access to a comprehensive suite of career, college, and financial aid planning services in a web-based environment using a single log-on and password.</p>	
9 EXPLANATION OF NEED FOR OR REQUIREMENT PLACED ON THE STATE TO ACQUIRE THE SERVICE <p>Tennessee lags regional and national averages in the educational attainment level. According to the National Center for Higher Education Management Systems, only six states have a working age population with a lower proportion of college graduates than Tennessee. Currently, only 29.9 percent of Tennessee's adults aged 25-64 hold an Associate's degree or higher, compared to an average of 34.3 percent for Southern Regional Education Board states and 37.2 percent for the nation.</p> <p>Tennessee currently produces approximately 35,000 college graduates per year. Holding conditions constant, current production indicates that annual degree production will be about 38,000 in 2015. To meet the national average, Tennessee needs to produce a cumulative additional 269,000 degrees (Associates and Bachelors) by 2025.</p> <p>Meeting this ambitious goal can only be achieved by increasing productivity with students currently enrolled as well as reaching out and preparing populations underserved by Tennessee public higher education. One of the greatest challenges facing Tennessee is the scarcity of low-income and first generation students entering and completing postsecondary. Statistics focused on the benefits of postsecondary education such as an increase in lifetime earnings</p>	

AGENCY REQUEST TRACKING # 33201-03310

with increased education, the percentage of new jobs requiring a postsecondary degree, and the need for a more educated workforce are well known among the business, education and policy communities. Yet, this message has not been effectively communicated to all Tennesseans nor is it engrained Tennessee school and familial culture. College access programs and professionals work with under-served, low-income and first-generation college students to address this gap in knowledge. While such efforts are not new, the college enrollment process is growing increasingly complex, the paperwork more cumbersome, the entrance credentials more rigorous and the need to succeed more essential. College access and success efforts are now more important than ever to help students plan, apply, pay for, and complete college.

One of the primary goals of the web portal initiative includes the design and implementation of a robust college access web-based planning portal. The web portal system will enable students as early kindergarten to plan their future careers, begin to understand the need for higher education, take courses in middle and high school to be academically prepared for college, and learn how to apply for admission and financial aid. The web portal will have Tennessee specific resources designed to aid in the postsecondary success of all Tennesseans.

- 10 **HAS THE PROCURING AGENCY EVER BOUGHT THE SERVICE BEFORE ?** ☐ YES or ☒ NO
IF SO, WHAT PROCUREMENT METHOD WAS USED ?

- 11 **NAME & ADDRESS OF THE CONTRACTOR'S PRINCIPAL OWNER(S)** (NOT required for a TN state education institution)
 XAP Corporation
 3534 Hayden Ave.
 Culver City, CA
 90232

- 12 **EVIDENCE OF THE CONTRACTOR'S EXPERIENCE & LENGTH OF EXPERIENCE PROVIDING THE SERVICE**

XAP is a trusted and proven partner to numerous organizations including university and college systems, state agencies (e.g., College Foundation of North Carolina – see www.cfnc.org, Florida Department of Education, Mississippi Department of Education, Oklahoma State Regents for Higher Education), regional education compacts (e.g., Southern Regional Education Board – see www.electroniccampus.org), the California State University System – see www.csumentor.edu and California Community College System – see www.cccapply.org), and the U.S. Department of Education (see www.studentaid.ed.gov). For these organizations and many others, XAP has designed, developed and implemented technology solutions aligned with the partners' stated objectives, such as improving postsecondary-going rates, increasing awareness of postsecondary opportunities, and facilitating online admissions applications and electronic student record exchange.

Today, Xap continues to be the leader in college success portals, helping serve over 40 million students and their families to build aspirations and increase opportunities.

- 25+ years of vendor experience providing career planning resources across an international landscape to students and adults
- 12+ years of vendor experience delivering Internet-based college planning resources across a national landscape
- Experience in providing integrated college access systems in Colorado, Georgia, North Carolina, Rhode Island, and 25 other states, Southern Regional Education Board and US Department of Education

- 13 **OFFICE FOR INFORMATION RESOURCES SUPPORT** (required for information technology service)

☒ ATTACHED or ☐ NOT APPLICABLE (N/A only to non-information technology service & THDA)

- 14 **eHEALTH INITIATIVE SUPPORT** (required for health-related professional, pharmaceutical, laboratory, or imaging service)

☐ ATTACHED or ☒ NOT APPLICABLE

AGENCY REQUEST TRACKING # 33201-03310

15 HUMAN RESOURCES SUPPORT (required for state employee training service)

☐ ATTACHED or ☒ NOT APPLICABLE

16 DESCRIPTION OF EFFORTS TO IDENTIFY REASONABLE, COMPETITIVE, PROCUREMENT ALTERNATIVES

THEC conducted a review of on-line, college access resources and were unable to find another company with the ability to meet all business, functional and technical requirements. It is important to highlight, XAP is the only company we found offering career guidance (K – 12 and adult), customizable school planning, transcript exchange, professional center, and higher education admissions application resources all in one integrated system access via a single log on. Upon identifying Tennessee's goals and needs, as described above, and XAP'S unique programmatic benefits staff members secured references from peer states via phone and face-to-face conversations. THEC staff members spoke with professionals from Rhode Island, Georgia, Colorado and North Carolina at a conference in June 2008; staff members also spoke with professionals from North Carolina on numerous occasions since June 2008 regarding their experience working with XAP Corporation. Overwhelming, XAP is the preferred vendor of states working to make large gains in high school graduation, college enrollment and degree production.

17 JUSTIFICATION FOR NON-COMPETITIVE NEGOTIATION RATHER THAN A COMPETITIVE PROCESS

THEC conducted a review of on-line, college access resources and were unable to find another company with the ability to meet all business, functional and technical requirements. It is important to highlight, XAP is the only company we found offering career guidance (K – 12 and adult), customizable school planning, transcript exchange, professional center, and higher education admissions application resources all in one integrated system access via a single log on. Upon identifying Tennessee's goals and needs, as described above, and XAP'S unique programmatic benefits staff members secured references from peer states via phone and face-to-face conversations. THEC staff members spoke with professionals from Rhode Island, Georgia, Colorado and North Carolina at a conference in June 2008; staff members also spoke with professionals from North Carolina on numerous occasions since June 2008 regarding their experience working with XAP Corporation. Overwhelming, XAP is the preferred vendor of states working to make large gains in high school graduation, college enrollment and degree production.

AGENCY HEAD SIGNATURE & DATE

 4.5.10

RICHARD G. RHODA, EXECUTIVE DIRECTOR



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
OFFICE FOR INFORMATION RESOURCES

DAVE GOETZ
COMMISSIONER

312 ROSA L. PARKS AVENUE
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TELEPHONE (615) 741-7358
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JAMIE ETHERIDGE, DEPUTY CIO
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LEE GREGORY, PROJECT MANAGEMENT
JASON GUNNOE, INFORMATION SECURITY
LEIGHANNE HAYNES, IT PLANNING
TRICIA KITCHENS, SPECIAL SERVICES
F. BRADLEY MEYERS, ENTERPRISE ARCHITECTURE,
QUALITY ASSURANCE & TESTING
ROGER PELHAM, DATA NETWORKING &
TELECOMMUNICATIONS

MEMORANDUM

TO: O. W. Higley, Assistant Executive Director Fiscal Affairs/Information Technology
Tennessee Higher Education Commission

FROM: Jamie Etheridge, Chair
IT Assessment & Budget Committee (IT-ABC)

DATE: November 17, 2009

SUBJECT: College Access Portal/Transcript Exchange (GU0910) Project Disposition

The IT-ABC has reviewed the College Access Portal/Transcript Exchange (GU0910) project. This project is approved to proceed. Please work with Jason Gunnoe, Chief Information Security Officer, as you develop the Request for Proposal (RFP) to address the security of the student data that will be transmitted and stored on this website.

If you have any questions, please call Todd Ragan at 532-0245 or me at 741-7358. Also, feel free to call upon any of the various sections of OIR if we can provide you with any assistance in planning for your information technology needs.

cc: Mark Bengel, Chief Information Officer
Glenn Yarbrough, Chief Technology Officer
IT-ABC Members
Cathy Pierce, Budget Coordinator
Carol Neiger, Budget Analyst



CONTRACT

(FA-type fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

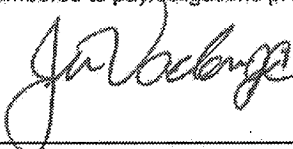
Agency Tracking # 33201-03310	Edison ID 19758
Contractor XAP Corporation	Contractor Federal Employer Identification or Social Security # <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 954610552

Service
This contract is for the provision of electronic transcript services and CollegeforTN initiative.

Contract Begin Date May 1, 2010	Contract End Date April 28, 2015	Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #(s)
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FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2010			\$1,196,456.00		\$1,196,456.00
2011			\$1,196,456.00		\$1,196,456.00
2012			\$1,196,456.00		\$1,196,456.00
2013			\$1,196,456.00		\$1,196,456.00
2014			\$1,196,456.00		\$1,196,456.00
TOTAL:			\$5,982,280.00		\$1,196,456.00

American Recovery and Reinvestment Act (ARRA) Funding - ☐ YES ☒ NO

OCR USE FA	Agency Contact & Telephone # James R. Vaden, Associate Executive Director of Fiscal Affairs 615.741.7575
	Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred) 
	Speed Code Account Code

Contractor Ownership/Control

<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> Government
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input checked="" type="checkbox"/> NOT Minority/Disadvantaged	<input type="checkbox"/> Other

Contractor Selection Method

<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation *	<input type="checkbox"/> Alternative Competitive Method *
<input checked="" type="checkbox"/> Non-Competitive Negotiation *	<input type="checkbox"/> Other *	

***Procurement Process Summary**

The State found no other entities who offer the comprehensive array of career, high school, college and financial aid planning services needed by THEC, TSAC and the Tennessee school systems. No other vendor offers the total package of needed solutions including: transcript, higher education admission application, career exploration, high school planning, college planning, and financial aid planning resources needed by Tennessee integrated into one common system. XAP also holds extensive knowledge of State Board Rules and Regulations as well as the content/curriculum standards required by Tennessee law for school counselors, such institutional knowledge is invaluable to the partnership and fosters the portal's success.

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
TENNESSEE HIGHER EDUCATION COMMISSION
AND
XAP CORPORATION**

This Contract, by and between the State of Tennessee, Tennessee Higher Education Commission (THEC), hereinafter referred to as the "State" and XAP Corporation, hereinafter referred to as the "Contractor," is for the provision of electronic transcript services and CollegeforTN initiative as further defined in the "SCOPE OF SERVICES."

The Contractor is a FOR-PROFIT CORPORATION

Contractor Federal Employer Identification: 954610552

Contractor Place of Incorporation or Organization: Delaware

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.

A.2. Background and Objectives: Tennessee lags regional and national averages in the educational attainment level. According to the National Center for Higher Education Management Systems, only six states have a working age population with a lower proportion of college graduates than Tennessee. Currently, only 29.9 percent of Tennessee's adults aged 25-64 hold an Associate's degree or higher, compared to an average of 34.3 percent for Southern Regional Education Board states and 37.2 percent for the nation.

Tennessee currently produces approximately 35,000 college graduates per year. Holding conditions constant, current production indicates that annual degree production will be about 38,000 in 2015. To meet the national average, Tennessee needs to produce a cumulative additional 269,000 degrees (Associates and Bachelors) by 2025. To achieve this goal, Tennessee higher education must produce 44,000 postsecondary degrees per year by 2015 and eventually 59,000 degrees per year by 2025. In the other words, Tennessee needs to increase the number of individuals obtaining degrees by 3.5 percent every year from now until 2025, according to www.MeetingtheChallengefromtn.gov/moa/what_goal.

In 2005, the Tennessee Department of Education (TDOE), Tennessee Student Assistance Corporation (TSAC), and Tennessee Higher Education commission (THEC) sought a solution that would provide a broad avenue of access to Tennessee educational opportunities beyond high school.

A.2. Product: Tennessee procured a solution from XAP Corporation to provide a broad avenue of access to Tennessee education opportunities beyond high school. The resulting website www.CollegeforTN.org is designed especially for use in Tennessee and allows the user, which includes students in grades K - 12, to plan their future careers, begin to understand the need for higher education, know which courses to take in middle and high school to be academically prepared for college, prepare for tests, including ACT, SAT, and GRE, and learn how to apply for financial aid. Additionally, postsecondary students, parents, guidance counselors, and college access professionals will have access to a comprehensive suite of career, college, and financial aid planning services in a web-based environment using a single log-on and password.

A.3. The Contractor shall provide the following Specific and Unique Features of the Web Portal:

- a. Career planning tools which incorporate career exploration tools and resources providing a comprehensive career exploration experience for all Tennessee citizens. Assessments will include an Interest Profiler, Career Cluster Survey, Basic Skills Survey, Transferable Skills checklist, and Work Values Sorter. Career exploration resources will also include career search and matching functionality organized around the career clusters as determined by the U.S. Department of Labor and will be tailored to reflect Tennessee's Department of Education career cluster customizations. Elementary School students will have access to age appropriate career exploration tools in the module Paws in Jobland. The career exploration resources found on the web portal will change in content and form dependent on the age of the user ensuring that all users have a career exploration experience customized to their needs and age level.
- b. High School planning tools which include a planning timeline and a personalized plan of study, outlining what students and parents should be doing throughout a student's high school career to effectively plan for college. The personalized plan of study will allow students to make high school course plans. The plans of study will be populated with all courses listed as approved by the Tennessee Department of Education and will be organized in accordance with Tennessee course and graduation standards. Local districts and schools will have the ability to customize course offerings, course sequences, and options for the personalized plan of study of students that attend their particular school or district.
- c. College planning tools which offer resources allowing students to explore all higher education institutions as provided by the State. Web portal users will be able to browse Tennessee higher education institutions, view program and major profiles, access college preparation content, and participate in standardized preparation tests, including ACT, SAT, and GRE. Additionally, the web port will provide online applications for admission to all Tennessee institutions. The State will have the capability to customize and add content, providing students with information on how to plan and prepare for their postsecondary.
- d. Financial Aid planning tools which include a set of comprehensive financial aid resources including financial aid calculators, an Expect Family Contribution (EFC) calculator, user-personalized financial planning tool and scholarship search tools. The State will have the ability to customize and supplement the financial aid and financial literacy information provided. The portal will also provide the ability of users to transfer information found in user profiles directly to the Free Application for Federal Student Aid (FAFSA) form.
- e. Life-long Portfolio which provide users with a personal web-based portfolio that will house all career, high school, college, and financial aid planning activity outcomes. Users will be able to manage items such as careers, postsecondary institutions, and academic programs of interest. The portfolio provides resources including email, calendar, and the capability of communicating with school personnel.
- f. Adult Students portal which provides career, college, and financial aid planning tools that are tailored to the adult student. Workforce development and career centers have access to the Professional Center to better aid in facilitating resources to adults. The adult portions of the website will be customizable both in appearance and content to better reflect the needs of Tennessee.
- g. Professional Center which gives designated school, university, and workforce center personnel access to the accounts of all individuals associated with their respective programs. Professional center users will have the ability to segment individuals in a variety of ways (i.e. grade level, last name, career interests, etc) to maximize use. Professional center users will be able to track web portal user's progress in competing site activities including assessment, college applications, and high school plans.

Messages and event notices can be sent to individual portal user accounts. School personnel can upload and send transcripts through the Professional Center. User-friendly reports are available in the Professional Center to track, engage and keep portal users accountable. Sample reports include a list of students who are interested in majoring in Biology, which users have applied to college, or a list of students who have not yet completed a personalized plan of study. The Professional Center provides tools to more efficiently manage portal user's career, high school, college and financial aid planning. Additionally, school district and state level educators will have the capability of obtaining aggregate and disaggregate data regarding student usage and outcomes.

A.4. Functional Requirements: The Contractor shall provide the following functional requirements:

- a. Customizable user access permission levels to accommodate multiple roles.
- b. Customizable user interface that provides integrates and/or supports social networking;
- c. A single integrated portal with no or limited links to subsystems that provides core features such as:
 - (1) Single sign-on capabilities in a secure online environment requiring the use of a secured user id and password.
 - (2) Ability to identify, track and record student career interests.
 - (3) K-12 roadmaps that lead and measure a student's progress through the system's functionality and activities in a logical order culminating with the student arriving at their chosen college or career destination.
 - (4) A lifelong electronic portfolio to support student's future education and employment goals.
 - (5) Integrated ACT/SAT/GRE test prep and recording capabilities.
 - (6) Electronic admissions application capabilities to Tennessee higher education institutions.
 - (7) Electronic academic transcripts delivery to include high school to high school, high school to Tennessee agencies, high school to college, and college to college.
 - (8) Electronic assessment prep and delivery.
 - (9) Student and Adult learner resume development capabilities.
 - (10) Capabilities to provide or support the delivery of financial aid information on federal and Tennessee grants, scholarships, work study and student loans including the capabilities to provide and/or integrate electronic applications associated with each program.
 - (11) Capabilities to upload, store, retrieve and update academic and career related documents.
- d. The ability to link to external websites and/or return pre-determined student support services and/or program information to the student.
- e. On demand training related to the tools, features, and functionality for regional and Tennessee level users and administrators.

A.5. Technical Requirements: The Contractor shall provide the following technical requirements:

- a. A low cost, interoperable, and commercial off-the-shelf solution that avoids new development, and leverages new or existing technologies.
- b. Compliance with the Children's Online Privacy Protection Act (COPPA).

- c. Compatibility and integration with the Occupational Employment Statistics Program (OES).
- d. Electronically supported administration of assessments and accountability as outlined by the No Child Left Behind (NCLB) Act.
- e. Interoperability (easy import, export or integration) with Tennessee student information systems (district and state level), GEAR UP programs, and other College and Career applications.
- f. The ability to add and change content, links, and pages to best suit the needs of Tennessee.
- g. The ability to incorporate Tennessee based information including employment outlook data to address Tennessee specific needs (i.e. the creation of a College Access Network page or a page dedicated to Tennessee-specific financial aid options).
- h. Both standard and ad-hoc reporting on the state, district, and school level with capabilities of offering aggregated or disaggregated data on system usage, student portfolios, career interests individually or by groups, academic progress, pre-determined lesson plans, academic assessments, test and/or exit exam scores.
- i. Timely system updates reflecting policy changes at both the federal and state levels.
- j. Both on-site and fully hosted software options.
- k. 24 x 7 support capabilities.
- l. Minimum down-time.
- m. The Contractor shall renew the domain name CollegeforTN.org as required.

A.6. Should either party choose to terminate this Contract, the Contractor agrees to transfer all rights to the domain name "CollegeforTN.org," with the understanding that the Tennessee Higher Education Commission will be responsible for all costs associated with the transfer and future renewals.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on May 1, 2010 and ending on April 30, 2015. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed FIVE MILLION NINE HUNDRED EIGHTY-TWO THOUSAND TWO HUNDRED EIGHTY DOLLARS (\$5,982,280.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any

such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
May 1, 2010 – April 30, 2015	
Transitions Premium Module for High School Students	\$ 700,551.00 per year
Middle School Module	\$ 130,000.00 per year
Paws in Jobland Module (Elementary School Level)	\$ 160,000.00 per year
Adult Module – Adult Learner/Job Seeker	\$ 0.00 (Included with 5-year Contract)
Applications and Transcripts	\$ 205,905.00 per year

- c. The Contractor shall not be compensated for travel time to the primary location of service provision.
- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.
- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Tennessee Higher Education Commission
Suite 1900 – Parkway Towers
404 James Robertson Parkway
Nashville, TN 37243
 - b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: Tennessee Higher Education Commission, GEAR UP TN;
- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
 - iv. Amount Due by Service; and
 - v. Total Amount Due for the invoice period.

c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.

d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. **STANDARD TERMS AND CONDITIONS:**
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least ninety (90) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of

this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment REFERENCE A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.

D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.

D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Kathleen Tone, Associate Executive Director for P-16 Initiatives
Tennessee Higher Education Commission
Suite 1900, Parkway Towers
404 James Robertson Parkway
Nashville, TN 37243
Email: Kathleen.Tone@tn.gov
Telephone Number: 615.741.7565
Fax Number: 615.741.2630

The Contractor:

Barbara McDaniel, Regional Sales Director
XAP Corporation
3534 Hayden Ave.
Culver City, CA
90232
bmcdaniel@xap.com
Telephone Number: 251.980.5240
FAX Number: 310.842.9898

- E.3. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract and in the amount equal to FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00). The Contractor shall submit the bond no later than the day immediately preceding the Contract start date and in the manner and form prescribed by the State (at Attachment B hereto), and the bond shall be issued through a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations under this Contract for:

- a. the Contract term and all extensions thereof; or
- b. the first, calendar year of the Contract (ending December 31st following the Contract start date) in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) and, thereafter, a new performance bond in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) covering each subsequent calendar year of the contract period. In which case, the Contractor shall provide such performance bonds to the State no later than each December 10th preceding the calendar year period covered beginning on January 1st of each year.

Failure to provide to the State the performance bond(s) as required herein prior to the Contract start date and, as applicable, no later than December 10th preceding each calendar year period covered beginning on January 1st of each year, shall result in contract termination. The Contractor understands that the stated amount of the performance bond required hereunder shall not be reduced during the contract period for any reason.

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.5. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.6. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of *Tennessee Code Annotated*, Section 12-7-101, et. seq., shall be printed unless a printing authorization number has been obtained and affixed as required by *Tennessee Code Annotated*, Section 12-7-103 (d).
- E.7. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.
- E.8. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of

the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.


E.9. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, et. seq., the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

E.10. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.

- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
- b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
- c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the VBP Contracting Restriction Waiver Request format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

IN WITNESS WHEREOF,

XAP CORPORATION:


RAMESH SETHURAMAN
VICE PRESIDENT & CONTROLLER

4/2/2010
DATE

TENNESSEE HIGHER EDUCATION COMMISSION:



RICHARD G. RHODA, EXECUTIVE DIRECTOR

4.5.10

DATE

APPROVED:

COMMISSIONER OF FINANCE & ADMINISTRATION

DATE

COMPTROLLER OF THE TREASURY

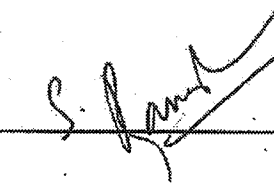
DATE

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	33201-03010
CONTRACTOR LEGAL ENTITY NAME:	XAP CORPORATION
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	954610552

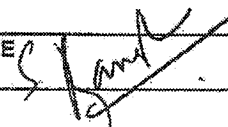
The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.



NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

RAMESH SETHURAMAN VICE PRESIDENT & CONTROLLER
PRINTED NAME AND TITLE OF SIGNATORY

4/2/2010
DATE OF ATTESTATION

FA CONTRACT INFORMATION SUPPLEMENT	
FOR ALL FA-TYPE CONTRACTS — COMPLETE EITHER SECTION A OR SECTION B	
Contract RFS #	33201-03010
Contractor:	XAP CORPORATION
SECTION A— CONTRACTOR IS AN INDIVIDUAL	SECTION B— CONTRACTOR IS A COMPANY (e.g., sole proprietorship, partnership, or corporation)
Is or has the contractor been a state employee?	Does an individual, who is or has been a state employee, own controlling interest in (or own) the contractor company?
<input type="checkbox"/> NO (no additional information required) <input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO (no additional information required) <input type="checkbox"/> YES
Was such employment within the past six months?	Was such employment within the past six months?
<input type="checkbox"/> NO <input type="checkbox"/> YES (an approved rule exception permitting a contract within six months of employment is also required)	<input type="checkbox"/> NO <input type="checkbox"/> YES (an approved rule exception permitting a contract within six months of employment is also required)
Does the contractor receive Tennessee Consolidated Retirement System (TCRS) retirement benefits?	Does the individual who owns controlling interest in the contractor company receive Tennessee Consolidated Retirement System (TCRS) retirement benefits?
<input type="checkbox"/> NO <input type="checkbox"/> YES (the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines)	<input type="checkbox"/> NO <input type="checkbox"/> YES (the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines)
CONTRACTOR SIGNATURE  VICE PRESIDENT & CONTROLLER	
CONTRACTOR XAP CORPORATION DATE 4/2/2010	